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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN EARLEE REXROAT,

Defendant and Appellant.

F070641

(Super. Ct. Nos. F12903153,
F14907576)

OPINION

THE COURT*

APPEAL from judgments of the Superior Court of Fresno County. D. Tyler Tharpe and Alan M. Simpson, Judges.[†]

Stephanie L. Gunther, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Peter H. Smith and Daniel B. Bernstein, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

† Judge Tharpe presided over case No. F12903153, and Judge Simpson presided over case No. F14907576.

In case No. F12903153, appellant Steven Earlee Rexroat pled guilty to vehicle theft (Veh. Code, § 10851, subd. (a)) and receiving stolen property (Pen. Code, § 496, subd. (a))¹ and admitted five prior prison term enhancements (§ 667.5, subd. (b)). In case No. F14907576, Rexroat pled no contest to vehicle theft and admitted three prior prison term enhancements.

On appeal, Rexroat contends one of his conditions of probation is constitutionally overbroad. We agree and modify the probation condition at issue. In all other respects, we affirm.

FACTS

On May 1, 2012, a Fresno police officer saw a motorcycle that had been reported stolen, parked at a motel. The officer waited 10 minutes and saw Rexroat exit room No. 225 and attempt to leave on the motorcycle. However, upon seeing the officer, Rexroat dropped the motorcycle and fled on foot. A perimeter was set up and Rexroat was eventually arrested in room No. 225 (F12903153).

On May 2, 2012, the district attorney filed a complaint charging Rexroat with vehicle theft (count 1), receiving stolen property (count 2), and six prior prison term enhancements.

On May 8, 2012, appellant entered his plea in case No. F12903153.

On June 8, 2012, the court sentenced Rexroat to a six-year local term consisting of three years in custody and three years of mandatory supervised release (MSR).

On August 10, 2014, Rexroat punched out the ignition on his friend's Toyota "Forerunner" and took it without permission. Afterwards, Rexroat sent the friend a text message saying that he was just borrowing the car and would return it later. Rexroat was arrested later that day (F14907576).

¹ All further statutory references are to the Penal Code.

On August 12, 2014, the district attorney filed a complaint charging Rexroat with vehicle theft (count 1) and receiving stolen property (count 2), and five prior prison term enhancements. The court also revoked Rexroat's MSR in case No. F12903153.

On August 19, 2014, Rexroat entered his plea in case No. F14907576.

On October 28, 2014, in case No. F14907576, the court sentenced Rexroat to an aggregate six-year local term, the middle term of three years on his vehicle theft conviction and three one-year prior prison term enhancements. The court also ordered Rexroat to serve three years of this sentence in custody followed by three years on MSR. In case No. F12903153, after finding that Rexroat violated the terms of his MSR, the court ordered him to serve an additional 160 days, with credit for time served, and released him on MSR.

DISCUSSION

As a condition of his MSR, the court ordered Rexroat not to associate with "people who [possess] or control dangerous or illegal drugs or narcotics without a lawful prescription." Rexroat contends this condition is constitutionally overbroad because it does not require that he be aware of the other person's drug possession. Respondent concedes that this condition is constitutionally overbroad and we agree.

In *People v. Garcia* (1993) 19 Cal.App.4th 97, with respect to a condition of probation similar to the condition of MSR Rexroat challenges, this court stated: "The condition requiring [the] appellant to refrain from associating with users and sellers of narcotics, felons and ex-felons impinged on [the] appellant's constitutional right of freedom of association. [Citations.] Thus, it "'must be narrowly drawn.'"" (*Id.* at p. 102.)

"[The a]ppellant argues that the association condition is not sufficiently narrowly drawn because it limits [the] appellant's association with persons not known to him to be users and sellers of narcotics, felons or ex-felons. We agree. In *People v. Robinson* (1988) 199 Cal.App.3d 816 ..., the court found no constitutional infirmity in a probation

condition prohibiting the ‘defendant [from] associat[ing] with anyone of *known* criminal record.’ (*Id.* at p. 817) We know of no case, and [the] respondent cites none, dealing with a probation condition prohibiting association with persons not known to be felons or ex-felons. A condition of probation that prohibits [the] appellant from associating with persons who, unbeknownst to him, have criminal records or use narcotics, is “‘overbroad [and therefore] is not reasonably related to a compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights.’”” (*People v. Garcia, supra*, 19 Cal.App.4th at p. 102.)

This reasoning is equally applicable to a condition of MSR. Thus, we agree with the parties that the challenged condition is overbroad because it does not contain a knowledge element.

DISPOSITION

The challenged condition of MSR in the judgment is modified to provide that Rexroat is not to associate with people he knows possess or control dangerous or illegal drugs or narcotics without a lawful prescription. In all other respects, the judgment is affirmed.